

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL,	MDL DOCKET NO.
INDUSTRY AVERAGE WHOLESALE	CIVIL ACTION
PRICE LITIGATION	01CV12257-PBS

THIS DOCUMENT RELATES TO:
ALL ACTIONS

DEPOSITION OF DANIEL WADE PETERSON

Taken at

Law Offices of

Gough, Shanahan, Johnson & Waterman

33 South Last Chance Gulch

Helena, Montana

December 15, 2005

9:00 a.m.

1 that you referred to earlier?

2 A. Yes, it is.

3 Q. With regard to drug use -- I'm sorry. With
4 regard to the drug use educational program?

5 A. Yes.

6 Q. Does Montana Medicaid have any input into
7 the content of these newsletters?

8 A. Well, we contract with our provider,
9 Mountain Pacific Quality Health Foundation. And so
10 basically they are acting as an entity of the
11 state, so --

12 Can you be more specific?

13 Q. Do any employees of Montana Medicaid
14 contribute to the content of the due care
15 newsletter?

16 A. I haven't since I have been there, simply
17 because I'm not a pharmacist. I don't feel this is
18 my area of expertise. So until we had a
19 pharmacist, I relied on Mark, who is a pharmacist,
20 to take care of those educational or those clinical
21 type issues.

22 Q. Now that you have a pharmacist on staff,

1 does your pharmacist on staff contribute to the
2 content of the due care program newsletter?

3 A. He hasn't, simply because his duties have
4 kept him busy with our preferred drug list and
5 getting that implemented.

6 Q. Does anyone within Montana Medicaid receive
7 a copy of the due care program newsletter before
8 it's disseminated to providers?

9 A. No.

10 Q. I would like to talk about the next item,
11 reimbursement by federal upper limit?

12 MS. BRECKENRIDGE: You are back to --

13 MS. SMITH-KLOCEK: I'm sorry.

14 MS. BRECKENRIDGE: Exhibit Peterson 003?

15 MS. SMITH-KLOCEK: Yes.

16 MS. O'SULLIVAN: Exhibit Peterson 011.

17 MS. SMITH-KLOCEK: I'm sorry, Exhibit
18 Peterson 011, which is the bullet points.

19 BY MS. SMITH-KLOCEK:

20 Q. How does reimbursement by federal upper
21 limit help to contain costs by Montana Medicaid?

22 A. Any drugs that the CMS has identified as

1 being on the federal, or the MAC list or federal
2 upper limit list typically has a lower
3 reimbursement rate than what we would offer.

4 So that is why we have that within our
5 reimbursement methodology which is we price our
6 drugs the lesser of our EAC plus a dispensing fee,
7 FUL plus a dispensing fee, or a provider's usual
8 and customary fee charge. So whichever is lower.

9 Q. You used a term MAC earlier?

10 A. Yes.

11 Q. Is that maximum allowable cost?

12 A. Yes.

13 Q. Do you consider that to be the same as FUL?

14 A. Yes, I do.

15 Q. Does Montana Medicaid use -- I'm sorry.

16 Does Montana Medicaid set any MAC prices for
17 generic drugs that are not on the federal upper
18 limit list?

19 A. No, we do not have a state MAC program in
20 Montana Medicaid.

21 Q. Has Montana Medicaid considered
22 implementing a state MAC program?

1 A. I haven't during my tenure, no.

2 Q. The next item is over-the-counter drug
3 coverage. How does over-the-counter drug coverage
4 help contain costs for Montana Medicaid?

5 A. I think a perfect example would be like
6 Prilosec OTC, when it went available over the
7 counter. We used that in part of our prior
8 authorization criteria that they had to fail first
9 on the lower cost over-the-counter alternative
10 before they went to the higher cost federal legend
11 drugs. So that would be a perfect example.

12 Q. Does Montana Medicaid reimbursement for
13 over-the-counter drugs?

14 A. Very limited number.

15 Q. Who determines which over-the-counter drugs
16 are reimbursement by Montana Medicaid?

17 A. Ultimately, the department determines. But
18 we certainly take in input from the formulary
19 committee, also known as the drug use review board.

20 Q. The next item is manufacturer rebates. I
21 know we already talked about supplemental rebates.
22 But I'm also aware that there is the regular drug